

## Chapter 9

# ADMINISTRATIVE REQUIREMENTS FOR SERVICE CONTRACTS

The Iowa State Legislature has shown a continuing interest in service contract activities. As a result, the executive branch has implemented several measures that address some of the concerns expressed by members of the legislature and that will help the executive branch gather useful information about service contracting so that it can provide effective reports to the legislature. This chapter provides information about some of the administrative requirements that have been adopted to help ensure that agencies are responding to the concerns raised by the legislature.

### 9.1 Procedures for Sole Source Procurements

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#### SOLE SOURCE PROCUREMENTS

"Sole Source" indicates the vendor was selected without a competitive process. Sole source procurement is justified only when the sole source conditions are met.

The head of the contracting agency must approve the sole source procurement that has an annual cost greater than five thousand dollars or an estimated multi-year cost, including renewals, equal to, or greater than, fifteen thousand dollars. Approval is to be obtained using the Sole Source Procurement Justification Form. The head of the contracting agency or designee must sign the contract for all sole source contracts with an annual cost greater than five thousand dollars or an estimated multi-year cost, including renewals, equal to, or greater than, fifteen thousand.

#### ***Submission of the " Sole Source Procurement Justification " Form:***

The person responsible for the contract is to complete the " Sole Source Procurement Justification" form. The form should be completed as follows:

#### Agency Information:

Enter the name of the work unit or entity proposing the contract. The contact person listed will be the one to answer questions about the content of the form.

#### Amount of Contract:

The amount to be entered is the total value of the contract, exclusive of extensions.

Duration of Contract:

Specify the beginning and end date of the contract.

Description of Procurement:

This section must include the name of the vendor and a brief description of the service to be procured.

Justification for Sole Source Procurement:

The list below identifies the circumstances under which an agency may use a sole source procurement. In this section, identify which one of the circumstances applies to the contract in question and provide information specific to the contract in question that supports that conclusion.

NOTE: Justification for a Sole Source cannot be based on the fact that the contractor has done the work for several years. There must be evidence to support the conclusion that there is no one else who could do the work, based on one of the reasons listed below. Describe the research performed or steps taken to support your conclusion that no other vendor could provide the service. The following six justification reasons are from **11 IAC Chapter 106.7**.

1. An agency determines that one service provider is the only one qualified or eligible or is quite obviously the most qualified or eligible to perform the service; or
2. The services being purchased involve work that is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity to the project, or ownership of intellectual property rights, could most satisfactorily provide the service;

or

3. An agency is hiring a service provider to provide peer review services for a professional licensing board pursuant to Iowa Code chapter 272C; or
4. An agency is hiring the services of experts, advisors, counsel or consultants to assist in any type of legal proceeding including but not limited to testifying or assisting in the preparation of quasi-judicial or judicial proceedings; or

5. The federal government or other provider of funds for the services being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the agency's use of the funds in a way that restricts the agency to only one service provider; or
6. Applicable law requires, provides for, or permits use of sole source procurement.

Description of the research performed for steps taken to determine that this procurement satisfies the requirements of **11 IAC Chapter 106.7**.

Description of what was done to reach the conclusion that selection of this vendor satisfies the requirements. For example, activities may have included calling organizations representing vendors with the required expertise to determine if there were other vendors that might be interested.

***Time Frames:***

The "Sole Source Procurement Justification" form shall be submitted for approval by the head of the contracting agency for approval prior to the execution of a contract. The submission should allow for sufficient time to complete a competitive process should the Sole Source procurement not be approved.

***Review Process:***

Appropriate agency personnel should review the "Sole Source Procurement Justification" form within time frames established by the agency. If the procurement meets the criteria, the head of the contracting agency must sign the "Sole Source Procurement Justification" form. Once the head of the contracting agency has approved the request, the contract may be submitted to the contractor and the head of the contracting agency or designee for signatures.

**Summary**

The contract for the sole source procurement shall comply with **11 IAC 107.4(8,18)**, uniform terms and conditions for service contracts, or **11 IAC 107.5(8,18)**, special terms and conditions (**11 IAC Chapter 107.5**). Uniform Terms and Conditions, and Special Terms and Conditions are discussed elsewhere in this Guidebook.

Processing the claim for the first payment on a contract requires a copy of the signed original contract, a copy of the pre-contract questionnaire, a signed copy of the "Sole Source Procurement Justification" form, and an original invoice or original claimant signature. **(11 IAC Chapter 106.7)**

## SOLE SOURCE PROCUREMENT JUSTIFICATION

Agency Name:

Contact Person:

Telephone:

Fax:

E-mail:

Amount of Contract

\$

Duration of Contract

Description of Procurement:

**Justification for Sole Source Procurement:** (Include here the explanation justifying the sole source procurement **and** stating why this particular vendor was selected.)

**Describe the Research Performed or steps** taken to determine that this procurement satisfies the requirements of **11 IAC Chapter 106.7**:

I certify that the above-described procurement was required to be a sole source acquisition and that it satisfies the requirements of applicable law including the Iowa Department of General Services **11 IAC – Chapter 106**.

Signature of Dept. Contract Authority

Date

Signature of Agency Head

Date

## 9.2 Procedures for Emergency Procurements

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### EMERGENCY PROCUREMENTS:

“Emergency” includes, but is not limited to, a condition:

1. That threatens public health, welfare or safety; or
2. In which there is a need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement; or
3. In which the agency must act to preserve critical services or programs or in which the need is a result of events or circumstances not reasonably foreseeable.

An emergency procurement shall be limited in scope and duration to meet the emergency. When considering the scope and duration of an emergency procurement, the agency may consider price and availability of the service in order to obtain the best value for the funds spent under the circumstances. Agencies should attempt to acquire services with as much competition as practicable under the circumstances.

Emergency purchases should not be used as a solution for hardships resulting from neglect, poor planning or lack of organization by the agency.

**The head of an agency shall sign all emergency contracts and amendments regardless of value or length of term.** If the head of an agency is not available, a designee may sign an emergency contract or amendment. **(11 IAC Chapter 106.8)**

The following process for emergency procurements is required when the cost of the contract exceeds five thousand dollars.

#### ***Submission of the "Emergency Procurement Justification" form:***

An “Emergency Procurement Justification” form must be completed as soon as the need for emergency procurement is identified. The guidelines for completion are outlined below. The “Emergency Procurement Justification” form should be reviewed within the time frames established by the agency.

The form should be completed as follows:

Agency Information:

Enter the name of the work unit or entity proposing the contract. The contact person listed will be the one to answer questions about the content of the form.

Amount of Contract:

The amount to be entered is the total value of the contract, exclusive of extensions.

Duration of Contract:

Specify the beginning and end date of the contract.

Description of the Procurement:

This section must include the name of the vendor and a brief description of the service to be procured.

Justification for Emergency Purchase:

This section must show why the purchase is qualified as an emergency purchase. There are three allowable emergency situations: "Emergency" includes, but is not limited to, a condition:

1. That threatens public health, welfare or safety; or
2. In which there is a need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement; or
3. In which the agency must act to preserve critical services or programs or in which the need is a result of events or circumstances not reasonably foreseeable.

Information in this section should describe how the situation in question meets one of the above situations.

Competitive Steps Taken Before The Procurement Was Made:

This section must show the following:

- The process used to determine a fair and reasonable price for the service, i.e. competition where practical, negotiation with the vendor [or previous expenditure comparison for similar services.]
- Actions taken to verify the vendor's qualifications, applicable insurance coverage, license or other requirements pursuant to the contract.

***Time Frames:***

The Emergency Procurement Justification Form shall be submitted for agency the head of the contracting agency approval prior to the execution of a contract and should be submitted immediately upon identification of the situation warranting the emergency procurement.

**Review Process:**

The head of the contracting agency or designee must sign the " Emergency Procurement Justification Form" to indicate approval that the procurement meets the criteria for an emergency. Once the head of the contracting agency or designee has approved the request, the contract may be submitted to the Contractor and the head of the contracting agency or the head of the contracting agency's designee for signatures.

If an emergency procurement results in the extension of an existing contract that contains performance criteria, the contract extension shall comply with **11 IAC 107.4(8,18)**, uniform terms and conditions for service contracts, or **11 IAC 107.5(8,18)**, special terms and conditions. Uniform Terms and Conditions, and Special Terms and Conditions are discussed elsewhere in this guidebook.

**EMERGENCY PROCUREMENT JUSTIFICATION**

Agency Name:	_____
Contact Person:	_____
<u>Telephone</u>	_____
<u>Fax</u>	_____
<u>E-mail</u>	_____
Amount of Contract:	_____
Duration of Contract:	_____



**Please Note:** A purchase of this nature **does not** relieve the agency from seeking competition to the extent practicable, negotiating a fair and reasonable price, and documenting the procurement action. The agency must check vendor's qualifications, verification of insurance coverage (if applicable), information on warranty offered, and any other data pertinent to the procurement.

**Description of the Procurement:** \_\_\_\_\_

**Justification for Emergency Purchase:** (Include here the explanation justifying the emergency procurement **and** stating why this particular vendor was selected. The justification must outline the serious or urgent nature of the emergency, and the health, safety or critical business service or program that was jeopardized).

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Competitive Steps Taken Before Procurement was Made:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I certify that the above described situation was both unforeseen and was a necessary acquisition to preserve the health, safety, welfare or business continuity of a critical service for the State of Iowa consistent with Iowa Department of General Services **11 IAC – Chapter 106.**

\_\_\_\_\_  
Signature of Agency Head (or  
Designee if Agency Head is  
unavailable)

\_\_\_\_\_  
Date

Use more pages if necessary.

### **9.3 DAS-SAE Procedures 240.102**

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The purpose of DAS-SAE's policy in Procedure 240.102 is to provide general guidelines to be used by departments in the Employer/Employee Relationships, PCQ (Pre-Contract Questionnaire), SS-8 and payment processes.

**Employer/Employee Relationship, PCQ, SS-8**

Prior to signing a contract, Department of Administrative Services – State Accounting Enterprise (DAS-SAE) personnel must make a determination as to whether or not the contractor has an employer/employee relationship with the State. Contracts that create an employer/employee relationship are not allowed. See DAS-SAE's Procedure 240.102 section IV. (7.), to determine if an employer/employee relationship exists.

**Prior to signing a contract**, the department must review the VCUSTD (Vendor Customer Table) that is a part of the Iowa statewide accounting system (I/3). When DAS-SAE has reviewed and determined that no employer/employee relationship with the state exists, SAE will enter the SAE CONTROL # in the SAE Control # field on the VCUSTD table.

If an individual (using a social security number or a tax identification number) or a company has the SAE Control # field populated, enter the SAE Control # on the Pre-Contract Questionnaire and complete other department actions on the contract.

If the individual or company does not have an SAE Control #, then PRIOR to signing the contract the department MUST prepare and submit the original Pre-Contract Questionnaire (see Appendix Q for sample form), the completed Internal Revenue Service (IRS) form SS-8, if not contracting with a corporation (see Appendix F for a SS-8 and Appendix R for a Substitute SS-8 form), and the proposed, unsigned contract to DAS-SA.

If contracting with a group of individuals who will perform essentially the same function for the State and who will have essentially the same working relationship with the State, only one form SS-8 need be prepared. In preparing a "generic" SS-8, a statement must be attached outlining the estimated number of individuals per contract period. If the generic SS-8 must be later modified, then a new generic SS-8 must be processed through DAS-SAE for approval.

If the contract is between the department and an individual, and the service is to be performed in (3) days or less and sufficient evidence can be presented as part of the

Pre-Contract Questionnaire or attachments so that DAS-SAE can ascertain that no employer/employee relationship exists, no SS-8 need be completed.

In addition to the SS-8, a recap of the Twenty Common Law Factors used by the IRS to determine the existence of an employer/employee relationship is found in Appendix S.

If the contracting department has not pre-determined the existence of an employer/employee relationship and the contractor does not have the SAE Control #, then the completed SS-8, if not contracting with a corporation, along with the proposed, unsigned contract, must be attached to the Pre-Contract Questionnaire when it is submitted to DAS-SAE. In certain instances, the contractor may be required to complete IRS form W-9, Request for Taxpayer Identification Number Certification, as an aid to deciding the employer/employee relationship question. (See DAS-SAE Procedure 270.450 pg. 22 for an example of the W-9).

DAS-SAE will review the proposed, unsigned contract to determine if an employee/employer relationship will exist. If, after review of the Pre-Contract Questionnaire and supporting documents, DAS-SAE concludes that an employer/employee relationship will exist, the department must either select another contractor that will meet the independent contractor test, add as an employee on payroll, or use the State's third party contract with Temporary Staffing Services to pay the contractor.

After DAS-SAE review, the Pre-Contract Questionnaire (PCQ) and supporting materials will be returned.

Contracted services are not to be performed until all signatures are obtained and distribution of contract copies is made to the parties.

The contract should specify a starting and ending date. You should not enter into a service contract for a period of longer than six years (including extensions) unless you get a waiver of the duration limitation from the Director of the Department of General Services. See 11 IAC 106.11.

Contracts should include a termination clause including a non-appropriation clause. Service contracts may cross biennial and fiscal year lines, and, when they do the contract should specifically include a non-appropriation provision.

Create a sufficient number of originals of the contract so that the department maintains a copy for its file and a copy can be sent to the DAS-SAE when the first invoice is remitted for payment.

### **Exemptions**

Contracts between state departments, political subdivisions of the State of Iowa, federal government agencies, another state government or a political subdivision thereof are exempt from the PCQ process (See **11 IAC 106.4**).

Contracts under \$1,000.00 (plus allowable expenses) are exempt from the PCQ process.

### **Contract Payments**

The claim for payment or the first claim in a series of payments requires:

1. a copy of the signed original contract,
2. and a copy of the PCQ,
3. and a copy of the Report of Sole Source Procurement if applicable,
4. and a copy of the Report of Emergency Procurement if applicable,
5. and an original invoice or original claimant signature.

Subsequent claims shall include the following information on the voucher:

1. the number of payments processed in contract sequence,
2. and the document number and date the initial claim of this contract series was processed through I/3. (The initial claim of the series will have the contract attached). If an amendment was made, reference future payments to the claim which has the amendment attached,
3. and an original invoice or original claimant's signature.

Proper object codes shall be used. When paying attorneys use: 2462 Legal Fees, 2553 Adult Contract Legal Fees, 2554 Juvenile Contract Legal Fees. For other contractual services use the proper object code found on I/3 under the OBJ table.

Vouchers for contracts with individuals must contain the TIN (Taxpayer Identification Number).

When payment is made on a PRC (Payment Voucher for Purchasing) where a General Service Enterprise (GSE) contract is referenced, the state department is responsible for the Pre-Contract Questionnaire (PCQ) and the department should attach the PCQ referencing the SAE Control #.

Contracts in which the dollar amount is unknown, such as when payment is based on a percent of recoveries, certain generic contracts, etc., MUST have the PCQ and the contract signed by the department director, or designee.

When there is an amendment to the original contract it is not necessary to do a new PCQ (Pre-Contract Questionnaire), unless, the Employee/Employer relationship changes. The amendment is signed by both parties and attached to the GAX/PRC (Payment Vouchers), which references the claim with the original contract.

The GAX/PRC document number with the amendment attached should be referenced on all subsequent payments.

#### **9.4 Department of General Services (DGS) Reporting Requirements**

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The Department of General Services has been asked to collect information relating to the state's services contracting practices so that it can compile reports on the status of services contracting in the state. As a result, DGS periodically asks agencies about contracts that they have entered into. Good record keeping by agencies regarding their services contracts is essential to the reporting process.

DGS asks agencies to complete two separate reports on services contracting. The reports are the Annual Services Contracting Report and the Quarterly Sole Source Report. The Sole Source Report includes information from the Sole Source Procurement Justification form, although DGS may request more detail. Both reports

